

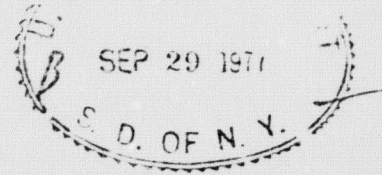
***United States Court of Appeals
for the Second Circuit***



APPENDIX

APPENDIX 77-6171

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
EDWARD WASHINGTON, :

Plaintiff, : 75 Civ. 2480 (CHT)

-against- :

SECRETARY OF HEALTH, EDUCATION :
AND WELFARE, :

Defendant. :

MEMORANDUM

46397

APPEARANCES

Plaintiff, Pro Se: EDWARD WASHINGTON
857 Ninth Avenue, Apt. 1D
New York, N.Y. 10019



For the Defendant: ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
One St. Andrew's Plaza
New York, N.Y. 10007

BPK

By: BARBARA S. SPIVAK
Assistant Regional Attorney
Office of the General Counsel
Department of Health, Education
and Welfare

JOHN M. O'CONNOR
Assistant United States Attorney,
Of Counsel

TENNEY, J.

The Secretary's motion for summary judgment in this
action was referred to United States Magistrate Kent Sinclair
to hear and report. By Report and Recommendation dated August

MICROFILM

SEP 29 1977

PAGINATION AS IN ORIGINAL COPY

3, 1977, the Magistrate recommended affirmation of the findings and conclusions of the Secretary. Plaintiff Edward Washington submitted a timely objection to the Magistrate's Report, to which the Court must respond with a "de novo determination of those portions of the report . . . to which objection is made." 28 U.S.C. § 636(b). Having conducted a review of the record, the Court concludes that the motion for summary judgment should be granted and the findings and conclusions of the Secretary should be affirmed.

By this action plaintiff Washington seeks to have overturned the Secretary's determination that recoupment of money paid to Mr. Washington as a result of an overpayment which occurred when he failed to report the simultaneous receipt of Supplemental Security Income and Title II Social Security disability benefits was proper. Mr. Washington's sole objection seems to be that the Government must have known that he was receiving both types of benefits. The record clearly belies this contention, however, and shows instead that plaintiff was aware of the impropriety of allowing the unreduced receipt of both benefits but failed to make the Government aware of the duplication. Since the findings of the Secretary are "supported by substantial evidence," they must be regarded as conclusive. 42 U.S.C. § 405(g). Accordingly, summary judgment is granted, and the findings and conclusions of the Secretary are affirmed.

So ordered.

Dated: New York, New York

September 27, 1977

Richard J. Evans

U.S.D.J.

PRO SE

DIST/OFFICE	DOCKET		FILING DATE			J	N/S	O	R	R 23	S	DEMAND OTHER	JUDGE NUMBER	JURY DEM.	DOCKET	
	YR.	NUMBER	MO.	DAY	YEAR										YR.	NUMBER
208-1	75	2480	05	27	75	2	860	1					0844		75	2480

PLAINTIFFS

WASHINGTON, EDWARD

DEFENDANTS Tenney, J.

SECRETARY, DEPARTMENT OF
HEALTH, EDUCATION AND
WELFARE

10/19

CAUSE

Review of the decision of Soc. Sec. 42 U.S.C. 405(g).

rg

ATTORNEYS

Edward Washington, Pro Se
857 9th Avenue
Apt 1D
New York, N.Y. 10019

AUSA Joann S. Siffert
U.S. Courthouse Annex 791-1959

77-6171

☒ CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
	MAY 27 1975			JS-5	
				JS-6	

UNITED STATES DISTRICT COURT DOCKET

DC-111 (Rev. 1/75)

[Handwritten signature]

75-2480 Judge Tenney Edward Washington -vs- Secretary of H.E.W.

DATE	NR.	PROCEEDINGS
05-27-75	(1)	Filed complaint and issued summons.
05-27-75	(2)	Filed ORDER that the plttf. is permitted to proceed in forma pauperis without prepayment of fees. Gagliardi, J.
07-03-75	(3)	Filed Summons with Marshal's Return. Served Secy of State by Ralph Lee, Atty's Office. 6/30/75 & Atty Gen. Wash. D.C. Certified Mail-#285933 & #285401, with atchd copy of complaint & order filed 05/77/75.
08-26-75	(4)	Filed ORDER that the time for deft. to answer is ext. to 10-13-75. Tenney, J.
08-28-75	(5)	Filed Affdvt of Mailing by Pauline P. Troia of U.S. Attys Office of copy of order by Certified Mail #130422, to Edward Washington by mail.
10-20-75	(6)	Filed ORDER extending time for deft to answer complaint from 10/13/75 to 11/13/75. Tenney, J. (mn)
10-22-75	(7)	Filed affdvt. of Pauline P. Troia of service of order of Judge Tenney by certified mail # 130431 on 10-21-75.
11-20-75	(8)	Filed ORDER. Time for deft to answer complaint extended from 11/13/75 to 12/13/75. Ordered that copy of order be served by atty for deft upon pro se plttf, by certified mail, with affdvt of service by AUSA Siffert request 30 day extension (US Attys office)
11-28-75	9	Filed Affdvt of mailing by Pauline Troia/ of copy of order on 11/20/75, extending time for Govt to answer -Certified Mail #130432 to Edward Washington.
12-15-75	10	Filed ANSWER OF DEFT. US Atty
05-05-77	11	Filed Notice of Motion by deft re: sn order pursuant to FRCP 12[c] granting jdgmt on the pleadings in favor of deft ret. 4/77
04-05-77	12	Filed defts memo of law in support of the motion to dismiss.
5-16-77		Filed memo-end. on motion document # 11. This motion is referred to Magistrate Bernikow to hear and determine. Tenney, J. m/n
5-13-77		Pre-trial conf. held before Judge Sinclair.
8/5/77	13	Fld Rpt & recommendation of Mag Sinclair signed 8/3/77 m/n
9-29-77	14	Fld memo opinion # 46397 re: dfts motion for summary jdgmt is granted & the findings of H.E.W. are affirmed. TENNEY J. (Jdgmt Clerk) m/m m/n copy to Pro Se.
09-30-77	15	Fld JUDGMENT dft HEW to have jdgmt against plttf disming the complaint & affirming the finding of H.E..W CLERK m/n copy & appeal form to pro se.
10-19-77	16	Fld plttfs notice of appeal to the U.S.C.A. from the order dissmising his complaint. . notice to U.S. Atty ,

RAYMOND F. B. CLERK

By

AFFIDAVIT OF MAILING

State of New York) ss
County of New York)

CA 77-6171

John O'Connor being duly sworn,
deposes and says that he is employed in the Office of the
United States Attorney for the Southern District of New York.

That on the
two copies
15th day of June 1978 he served ~~an~~ copy of the
within appellee's letter brief

by placing the same in a properly postpaid franked envelope addressed:

Edward Washington,
857 9th Ave. Apt. 1D
New York, NY 10019

And deponent further says he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Courthouse Annex, One St. Andrews Plaza, Borough of Manhattan, City of New York.

Sworn to before me this

15th day of June, 19 79

Fauline F. Ford